

05-18-00567-CV

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**In the Fifth Court of Appeals  
Dallas, Texas**

FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS  
12/17/2018 5:41:23 PM

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**DARLENE C. BALISTRERI-AMRHEIN,**  
*Appellant*

LISA MATZ  
Clerk

v.

**ATTORNEY LENNIE BOLLINGER, et al.**  
*Appellees*

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**On Appeal from the County Court at Law No. 6  
Of Collin County, Texas  
Cause Number 006-02654-2017**

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**APPELLEES' RESPONSE TO MOTION FOR EXTENSION**

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Appellees Attorney Lennie Bollinger and Worminton & Bollinger Law Firm (collectively "Bollinger") present this Response to Appellant Darlene C. Balistreri-Amrhein's ("Amrhein") Motion for Extension and state as follows:

**I. INTRODUCTION**

This appeal arises from the trial court's order dismissing Appellant/Plaintiff Darlene Amrhein's ("Amrhein") lawsuit because she failed to post security after being declared a vexatious litigant. More specifically, on April 5, 2018, the trial court entered its Order Granting Defendants' Motion to Declare Plaintiff a Vexatious Litigant and to Require Security. Pursuant to that April 5,

2018 Order, Amrhein was required to provide security by obtaining a bond in the amount of \$160,000.00 no later than May 5, 2018 at 5:00 p.m. Amrhein did not provide security as required by the April 5, 2018 Order. Accordingly, on May 14, 2018, the trial court entered an Order dismissing Amrhein's claims with prejudice pursuant to Texas Civil Practice & Remedies Code § 11.056, which states that a court **shall** dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish security within the time limit set by the order.

The very next day, on May 15, 2018, Amrhein filed her notice of appeal with this Court. Even before the record on appeal was due for filing, and on June 19, 2018, Amrhein sought to delay this appeal citing to her supposed need for surgery. *See* Supplemental Notice of Appeal and Docket Statements as Needed to Supplement Issues, filed with this Court on June 19, 2018. Recognizing that the record on appeal was not due until September 11, 2018, and briefing deadlines had not yet been triggered, this Court denied Amrhein's June 19, 2018 request to extend her deadline to file her Appellant's Brief. *See* this Court's June 29, 2018 Order.

The clerk's record was then filed on July 31, 2018. The reporter's record was not filed because Amrhein never paid for the reporter's record, and the trial court granted the court reporter's contest to Amrhein's statement of inability to

afford payment of court costs. As such, this Court entered an order on October 4, 2018 requiring the appeal to be submitted without the reporter's record. *See* this Court's October 4, 2018 Order. This Court ordered Appellant's Brief to be filed on November 5, 2018. *Id.*

On October 30, 2018, Amrhein submitted her "Appellant's Brief" but this Court rejected her attempted filing because Amrhein's Appellant's Brief did not comply with the briefing requirements of the Texas Rules of Appellate Procedure. On November 6, 2018, this Court entered an order denying Appellant's motion to exceed the word count limits and stated that an amended brief should be resubmitted by November 26, 2018 because the brief did not comply with the briefing requirements of Texas Rule 38.1 of Appellate Procedure. More specifically, the brief did not "state concisely and without argument the facts pertinent to the issues or points presented and it was not "supported by record references," in violation of Rule 38.1(g). *See* this Court's November 6, 2018 Order (citing TEX. R. APP. P. 38.1(g)). Moreover, the argument section did not "contain a clear and concise argument for the contentions made with appropriate citations to authorities and the record." *Id.* (citing TEX. R. APP. P. 38.1(i)).

On November 6, 2018, Amrhein sought to supplement the clerk's record with the order sustaining the court reporter's contest to her statement of inability to afford payment of court costs or appeal bond. This Court then extended to

December 10, 2018 Amrhein's deadline to file her Amended Appellant's Brief. *See* this Court's November 16, 2018 Order.

On November 20, 2018, Amrhein filed a motion to supplement, correct and complete the court record and extension to file her Amended Appellant's Brief citing to her need for surgery. This Court denied her request to supplement, correct and complete the court record but granted her extension to file her Amended Appellant's Brief to January 10, 2019. *See* this Court's November 26, 2018 Order. This extension was the third extension granted by the Court.

On December 11, 2018, Amrhein filed another request for extension of time to file her Amended Appellant's Brief citing to the same need for surgeries she has cited to in her prior requests for extension both in this Court and in the trial court. In this motion, she states that "barring further complications," she might be able to complete her Amended Appellant's Brief by February 1, 2019. Such request should be rejected by this Court.

## **II. ARGUMENT AND AUTHORITIES**

Amrhein's continued delay must come to an end. This Court has been more than generous in providing Amrhein with multiple extensions of time to file her Appellant's Brief. Even so, she has yet again requested another extension of time to file her brief. She continues to cite the same need for surgeries that she cited as a basis in her prior requests for extensions. While Appellees do not wish to be

insensitive to her alleged medical needs, the requests are not substantiated and have been the same reason for her continued request for extensions, not only in this appeal but throughout the underlying lawsuit in the trial court. *See, supra* § I of this Response; *see, e.g.*, (CR 386-390, 679-687, 1446-1466, 1467-1481, 2025-2052, 2053-2081). The Texas Rules of Appellate Procedure allow for extensions of time based on a reasonable explanation for the extension. *See* TEX. R. APP. P. 10.5(b)(1)(C). Amrhein's proffered excuse has been the same excuse throughout this appeal and below in the trial court and is not a reasonable explanation. Her requests will continue to go on indefinitely and will continue to cause delay and waste of valuable judicial resources.

Appellees request that this Court deny the request and order Appellant's Amended Brief be due on January 10, 2019 or the appeal will be dismissed. At the very least, should this Court be inclined to grant Amrhein another extension, Appellees request that this Court instruct Amrhein that no further extensions will be granted.

**For these reasons,** Appellees Attorney Lennie Bollinger and Worminton & Bollinger Law Firm request that this Court deny Appellant's motion for extension and order Appellant to either file her Appellant's Brief or dismiss the appeal.

Respectfully submitted,

**COBB MARTINEZ WOODWARD PLLC**

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**RULE 9.4 CERTIFICATE OF COMPLIANCE**

This document complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i), if applicable, because it contains 1,028 words, excluding any parts exempted by TEX. R. APP. P. 9.4(i)(1).

/s/ Katherine Elrich  
**KATHERINE ELRICH**

## CERTIFICATE OF SERVICE

I certify that the foregoing document was electronically filed with the Clerk of the Court using the electronic case filing system of the Court. I also certify that a true and correct copy of the foregoing was served via e-service, e-mail and U.S. First Class Mail to Appellant, *pro-se*, on the 17th day of December 2018.

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*Pro-se Appellant*

/s/ Katherine Elrich

**Katherine Elrich**